IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Arvind Kumar Joshi vs. State of Rajasthan
(S.B.C.Writ Petition No.3708/2002)

Dated:- 5th 'September, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.P.S.Bhati, Advocate for the petitioner.
Mr.Tarun Joshi, Advocate for the respondent.
Mr.Rameshwar Dave, Dy. Government Advocate.

Reportable

This writ petition has been filed by Shri Arvind Kumar Joshi who is a blind person. He is presently working as Teacher Gr.III in Government Upper Primary School, Police Line, Jodhpur. Having accepted the challenge of life in a determined manner, he acquired the qualification of M.A. in first division and B.Ed. in good second division. He with deep desire to achieve success in life strived to over come the deficiency inflicted upon him by cruel hands of destiny. Having secured the employment as Teacher Gr.III he did not remain content and still yearned for progress in life.

In response to the advertisement no.2/2001-2002 issued by the Rajasthan Public Service Commission (for short “the R.P.S.C.”) the petitioner applied for appointment on the post of School Lecturer(Hindi). The R.P.S.C. advertised 339 posts of School Lecturers(Hindi). The

petitioner was the only candidate who applied in response to the said advertisement against the posts of School Lecturers(Hindi) claiming reservation under the category of blinds. The R.P.S.C. issued to him admission card for appearing in the screening test conducted on 12th May, 2002. A copy of the admission card placed on record as Annexure 2 reveals that the category of the petitioner was mentioned as “”BL.” which is the short form of `blind'. When the result of the screening test was declared on 12.9.2001, the petitioner was shocked to find that he has been declared fail.

Since there was reservation of 3% for handicapped candidates as per requirement of Sections 32 and 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “the Act of 1995) and the petitioner was the only blind candidate who had applied for and appeared in the screening test , in that category he made inquiries from the office of the R.P.S.C. on 13th September, 2002. He was informed that there was no reservation for the blinds for appointment on the post of School Lecturer (Hindi). According to the respondents both blinds and partial blinds were eligible for and could be appointed only on the post of Music Teacher.

In the present petition, the petitioner has assailed the action of the respondents in treating him ineligible . Case of the petitioner is that according to Sections 32 and 33 of the Act of 1995, the respondents could not reject his candidature for appointment on the post of School Lecturer (Hindi). According to Rajasthan Disabled persons Employment Rules,

2000(for short “the Rules of 2000) reservation on the post in question is required to be given even to the blind. The action of the respondents in treating him ineligible is therefore illegal beside being arbitrary and discriminatory.

The respondent R.P.S.C. has contested the present petition and filed a detailed reply. It has raised preliminary objection as to maintainability of the present writ petition and quite interestingly the objection is to the effect that petitioner having applied in response to the advertisement and having appeared and failed in the screening test, could not be allowed challenge the selection. It has been stated that the screening test for short listing of the candidates was held on 12th May, 2002. The petitioner also appeared in such screening test and failed to qualify the same. There was therefore no necessity to examine his eligibility conditions. It has been submitted that according to the Rules of 2000, benefit of reservation for appointment on the post of School Lecturer(Hindi) has been extended to only such physically handicapped candidates who fall in the category of “OL” and “BLA” category which respectively represent the short form of orthopaedically handicapped in one leg and both legs.

The petitioner by filing an additional affidavit has brought on record a subsequent but significant development in the shape of notification dated 10.10.2002 issued by the State of Rajasthan. The respondent State by this notification has sought to amend Rule 4 of the Rules of 2000 . While the originally engrafted Rule 4 of the said Rules

provided that the reservation to the extent of 3% shall be available to the candidates having disabilities identified by the State Government and included in schedule I and II appended to the said Rules. The aforesaid notification sought to substitute this rule. The substituted rule provided that reservation of 3% shall be given to candidates having disabilities as are identified by the Government of India from time to time. As a corollary thereto, schedule I and II originally appended to the Rules of 2000 were also deleted by amending Rule 6 of the said Rules by the self same notification.

I have heard Mr.P.S. Bhati, learned counsel for the petitioner, Mr.Tarun Joshi, learned counsel for the respondent-R.P.S.C. and Mr. Rameshwar Dave, learned Dy.Government Advocate for the State.

Mr. P.S. Bhati, learned counsel for the petitioner while reiterating the arguments raised in memorandum of writ petition argued that the respondents are obliged in law to provide reservation to the physically handicapped persons for appointment on the post of School Teacher(Hindi) as per provisions contained in Sections 32 and 33 of the Act of 1995. He argued that the State of Rajasthan has framed the Rules of 2000 with a view to conferring benefit of reservation to the persons with disability including those who are blind and partially blind. The Rules of 2000 were amended by notification of the Government dated 10.10.2002 thereby adopting the identification of the post as required by Section 32 of the Act of 1995 made by the Government of India. He has

argued that even if the post of School Lecturer(Hindi) was not identified by the State of Rajasthan for the purpose of giving reservation to the blind, schedule I and II having now been deleted by the amendment in the Rules, the identification made by the Government of India would now prevail. He has invited attention of the Court towards notification No.178 dated 30.6.2001 issued by the Government of India wherein, in exercise of its powers conferred upon it by Section 32 of the Act of 1995 it has identified the posts of University/College/School Lecturers for blind and low-vision which have been respectively listed at serial no. 24-27 on page 592 of the notification. He has argued that since the notification which has been adopted by the respondent-State was issued by the Government of India on 30.6.2001 which in turn substituted an earlier notification dated 25.11.1986, under which post in question was already identified for blind, the petitioner cannot be considered ineligible for the purpose of providing reservation under the Rules of 2000 on the post of School Lecturer(Hindi). Mr. P.S.Bhati has invited my attention to the notification no. F-12(9) Education/1/99 dated 21st July, 2001 issued by the State Government whereby in deviation from the earlier provision, it was decided to give reservation to the extent of 3% to deaf, dumb and blinds for admission in the Graduation course of B.Ed./Shiksha Shastri. According to him once when the State Government decided to extend reservation to the blind for admission to the B.Ed. Course which makes them eligible for appointment on the post of School Lecturer(Hindi) and they cannot deny them reservation on the post of School Lecturer(Hindi). Mr.P.S. Bhati has also relied on an unreported decision of the Hon'ble Supreme Court in A.I.Confederation of the Blind & Anr. vs. U.O.I. & Anr.(Writ petition (Civil)

No.115/1998) , a Division Bench of this Court in Shiv Kumar Singh vs. State of Rajasthan & Anr. (D.B.C.Special Appeal(Writ) No.255/1996,decided on 14th August, 2001) and a Single Bench decision of this Court in Surya Prakash Sharma vs. State of Rajasthan & Anr. (S.B.C.Writ Petition No.3702/01,decided on 13th September, 2002). With the help of these judgments, he argued that physically handicapped candidates with disability of blindness cannot be denied appointment on the post of School Lecturer(Hindi) not only in the services of the Rajasthan School Education but also in Rajasthan College Education Service.

On the other hand, Mr.Tarun Joshi learned counsel appearing on behalf of respondent R.P.S.C. argued that the advertisement in question by which the applications were invited for appointment on the post of School Lecturer(Hindi) was issued by the R.P.S.C. on 8th June, 2001. According to this advertisement,reservation to the extent of 3% meant for physically handicapped candidates under the Rules of 2000 for the post of School Lecturer(Hindi) was available to only such candidates who were orthopaedically handicapped in one leg and in both legs. So far as the candidates with disability of blindness or partial blindness were concerned, reservation for them was provided only for the post of Music Teacher. He argued that the amendment brought about in the Rules of 2000 vide notification of the government dated 10.10.2001 would apply only prospectively and not to an ongoing recruitment process more particularly when the result of the selection was already declared prior to the issuance of the said notification on 12th

September,2002. Now that a long period of four years has gone by since then, no relief should be granted to the petitioner particularly when appointment on all the advertised posts have already been made. He therefore prayed that the writ petition may be dismissed.

I have bestowed my earnest consideration to the arguments advanced by the learned counsel for the parties, studied cited case law and perused the record.

At the outset, it may be stated that this Court while issuing notice to the petitioner on 3rd March, 03 passed an interim order in presence of the counsels for both the parties that “Meanwhile, selection process may be completed but the last person so selected in general category may be given appointment provisionally subject to decision of the writ petition”. I have purposely taken note of this fact because respondents have raised a categorical argument that not only the result of the selection was declared on 12th September,2002 but appointments have also been given to the successful candidates in the year 2002 itself. According to them, a period of four years having been elapsed since then, no relief could now be granted to the petitioner. I am however not to persuaded to accept this argument not only in view of the aforesaid interim order passed by this Court but also on the maxim of equity namely, *actus coriae-neminem-gravabit*- an act of Court shall prejudice no man. This principle is founded upon justice and good sense which serves a safe and certain guide for the administration of law. According to this principle no-one should suffer for fault of the Court . If the petition has

remained pending for four years, the petitioner cannot be made to suffer on that account. I therefore reject this argument raised on behalf of the respondents and proceed to decide the writ petition on merits.

Not only the nomenclature of the Act of 1995 indicates but also its preamble suggests that this act intended to give a succour to the persons upon whom destiny has inflicted various kinds of disabilities and provide them an opportunity to participate in the social milieu like any other able-bodied person. This Act was enacted with a view to implementing Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific Region to which India was one of the signatories. This proclamation was adopted by the Economic and Social Commission for Asian and Pacific Region in its meeting at Beijing in December, 1992 to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. Apart from numerous other countries from Asia and Pacific Regions, Republic of India was one of the participants in the said meeting. In order to highlight the seriousness of the concern shown for this section of society, it would be apt to reproduce the statement of the objects and reasons of the Act of 1995:-

> "The meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the Proclamation on the Full Participation and Equality of People, with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:-
>
> (i) to spell out the responsibility of the State

towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream.

2. Accordingly, it is proposed to provide inter alia for the constitution of Coordination Committee and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provision of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.

3. The Bill seeks to achieve the above objects."

Chapter 6 of the Act of 1995 deals with the reservation of

posts in various services and seats in various educational institutions of the State. Section 32 of the Act of 1995 provides that appropriate governments shall identify posts, in the establishments, which can be reserved for the persons with disability. Section 33 provides that every appropriate government shall appoint in every establishment such percentage of vacancies, not less than three percent, for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from -(i) blindness or low vision; (ii) hearing impairment; & (iii) locomotor disability or cerebral palsy, in the posts identified for each disability. Section 33 is subject to a proviso which suggest that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section. Section 34 provides for establishment of employment exchange with a view to providing help to the handicapped candidates desirous of seeking employment. Section 36 carves out an exception to the rule of carry forward of unfilled vacancies which concept hither-to was applicable to verticle reservations given on communal basis and provide for carrying forward of unfilled reserved vacancies for persons with disability to the succeeding recruitment year and if suitable persons with disability are not available then also to fill up such vacancies by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability. Section 39 provides that all educational institutions and other educational institutions receiving aid from the

Government, shall reserve not less than three per cent seats for persons with disabilities.

In the interim order passed in I.A. No.4 in W.P. No.115/1998 cited by learned counsel for the petitioner, their Lordships of the Hon'ble Supreme Court were dealing with a case where issue pertained to the reservation of identified teaching posts in the Faculties and Colleges of various Universities in terms of Section 33 of the Act of 1995. The extracts of the affidavit of the Chief Commissioner for Persons with Disabilities reproduced in the said order show that the government updated the list of identified posts by issuing notification dated 30th June, 2001 wherein the post of University/College/School Teachers for the blind and low-vision were listed at serial no. 24-27 on page no.592. According to this affidavit, 5% relaxation in cut of marks for the blind candidates appearaing in the National Entrance Test(NET) for Junior Research Fellowship and Lecturership was provided by the University Grant Commission.

In Shiv Kumar Singh vs. State of Rajasthan & Ors. (supra) , the Division Bench of this Court was dealing with a case wherein the petitioners having disability of blindness were claiming reservation on the post of Lecturer in College Education. The writ petition for challenging terms of the advertisement was filed in the year 1985 because Rule 3 of the Rajasthan Employment of Physically Handicapped Rules, 1976 (for short “the Rules of 1976”)debarred appointment of the blind on the post in State services. A Single Bench of this Court vide its judgment dated 18th

September, 1995 declared Rule 3 of the Rules of 1976 ultra vires to the provisions of the Constitution and directed the State of Rajasthan to constitute a committee to find out the basis for giving reservation to the handicapped persons yet observed that the petitioners were not entitled to any relief after a lapse of nine years. In the meantime,the Rules of 2000 were promulgated by the State of Rajasthan vide notification dated 9th September,2000 . The Division Bench while allowing the special appeal directed the State Government to consider the case of the two appellants for giving them appointment on the post of Lecturer reserved for physically handicapped which shall be effective from the date of publication of the Rules of 2000.

The Single Bench decision cited by the petitioner in Surya Prakash Sharma vs. State (supra) was a case wherein the petitioner was also a person with disability of blindness. He applied for appointment on the post of Lecturer, College Education pursuant to the advertisement issued by the R.P.S.C. on 31st May, 2001. In this advertisement, the R.P.S.C. confined the benefit of reservation to only such physically handicapped candidates who had physical disability in one leg or in both legs like in the present case. This Court on analysing the provisions of Section 33 of the Act of 1995 and para D of the report of Expert Committee dated 25th November, 1986 constituted for the purpose by the Central Government, allowed the writ petition with direction to the respondents to include the category of Bind and Partially Blind persons in the Rules of 2000 for giving them reservation on the post of Lecturer College Education and consider the case of the petitioner in that category

accordingly.

Para D of the report of Expert Committee dated 25.11.1986 which suggested for giving reservation to the various categories of handicapped including blinds for the teaching job in fields such humanities, law and language is worth reproduction:

> "Para 10(d) : So far as the teaching is concerned the Committee feels the jobs in Universities in fields such humanities, law and language can be handled by orthopaedically handicapped and blind person. The committee's report recommended at S.No.165 of Apendix 7 categorises disabled, suitable for jobs of Lecturer(Arts) College Education and held that partially deaf, disabled by both legs and both arms, one leg affected, one arm affected, partially blind and blind as identified for such posts."

The Government of India while accepting the report of the Expert Committee vide their office memorandum No.F.36034/4/86/Estt. (SCT) dated 25th November, 1986 identified the jobs for providing reservation to the physically handicapped persons in Groups A and B posts as would be evident from the extract of Serial No.164 and 165 of the Appendix of the said O.M. which is reproduced hereunder:-

S.NO.	NCO	TITLE	GROUP	PHYSICAL REQUIRMENTS	CATEGORIES OF THE DISABLED SUITABLE JOBS
1	2	3	4	5	6
		College Teachers(A)		ST	
164.		Lecturer (Architecture)		BD,BLA, OL,	
165.		" (Arts)		OA, PB, B	

NATURE OF WORK PERFORMED	WORKING
7	8.
College Teachers (Architecture xxxxxxxxx xxx xxxxxx xxxxxxxxx xxx xxxxxx College Teachers (Arts) They teach college students one or more Arts subjects such as History, Geography, Commerce, Sociology, Philosophy, Economics, Pol.Science , Indian or Foreign Language such a Hindi, Sinskrit, English etc. Deliver lectures and conduct seminiars, Set examination papers, conduct examination and evaluate answer books. Maintain class, registers and records, May conduct research and guide research work.	xxx xxxxx xxx xxxxx The work is performed mostly inside. The work placed is well lighted.

PD: Partially Deaf OL: One leg affected
BLA: Both legs + arms effected B: Blind PB: Partially blind"

A careful perusal of the aforesaid appendix would make it clear that the Government of India identified the post of College Lecturer for providing reservation to the blind not only in language subjects such as Hindi, Sanskrit, English etc but also in subjects like History, Geography, Commerce, Sociology, Philosophy, Economics and Political Science. When the Act of 1995 came in force, identification of various posts for persons having different kind of disabilities already made in O.M. dated 25th November, 1986 formed basis for such identification statutorily required by Section 32 of the Act of 1995.Such identification made by

the Government of India continued to remain valid for providing reservation to disabled persons with reference to Section 32 of the Act of 1995 till this list of identified posts was updated by the Government of India vide their Notification No. 178 dated 30th June, 2001. In this list also, the post of University/College/School Teacher for the blind and low-vision was included as identified post for providing reservation to them at Serial No.24-27 on page 592 thereof. In the circumstances therefore when the post of College Lecturer and that too in the language subject of Hindi stood identified by the Government of India with reference to the provisions of Section 32 of the Act of 1995, much earlier than the posts in question were advertised, there was no reason not to extend the benefit of reservation to the blinds in the State of Rajasthan to a lower post like School Lecturer(Hindi). Even if in the Schedule I and II appended to the original Rules of 2000, the State Government did not identify the post of School Lecturer(Hindi) as one for which reservation could be given to the persons with disability of blindness, this difficulty was over come by notification dated 10th October, 2002 by which Rules 4 and 6 of the Rules of 2000 were amended thereby deleting Schedule I and II appended thereto and adopting identification of the posts made by Government of India.

Identification of the posts on which reservation can be given to the persons with disability has to be made by the appropriate government with reference to Section 32 of the Act of 1995. “Appropriate government” has been defined in Section 2(a) to mean (i) in relation to the Central Government or any establishment wholly or substantially financed

by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government or any local authority, other than a Cantonment Board, the State Government. “Blindness” has also been defined in Section 2(b) of the Act of 1995 according to which blindness refers to a condition where a person suffers from either total absence of sight; or visual acuity not exceeding 6/60 or 20/200(snellen) in the better eye with correcting lenses; or limitation of the field of vision subtending an angle of 20 degree or worse. It is difficult to appreciate that when blindness for the purpose of the Act of 1995 is defined by a single provision namely Section 2(b) , how can the blind claiming reservation with reference to provisions of that Act, be treated dis-similarly by two different appropriate Governments particularly when much prior to the recruitment in question, the post of School Lecturer(Hindi) stood identified by one such appropriate Government (Government of India) which was later adopted by another. Curiously enough, when this very post was identified for the purpose of reservation of blinds by the Government of India in exercise of very same power which the State Government also possessed, how possibly could one appropriate Government feign complete blindess to such identification made by another. Such a dichotomy is very hard to appreciate and difficult to approve. Impediment of law if there was any in giving reservation to the blind on the post of School Lecturer(Hindi) awas already removed once when the Government of Rajasthan decided to adopt the identification made by the Government of India by amending Rules of 2000 vide Notification dated 10.10.2002. This adoption of

identification of posts which was made way back in the year 1986, in my view would relate back to the identification as originally made by the Government of India at least from the date when Rules of 2000 were enforced and would be applicable from their inception because the source of power for both the Governments in making such identification is traceable to the same common provision namely, Section 32 of the Act of 1995 and the recipient of the benefit of the reservation namely blind is also common and identifiable with reference to very same provision of the definition of blindness namely, Section 2(b) of the Act of 1995. If this were not to be interpreted so, it would simply tantamount to discriminating against the persons with disability of blindness in the State of Rajasthan vis-a-vis those claiming similar benefits with reference to the identification made by the Central Government in its services in the State of Rajasthan in giving effect and implementation of the very same Act of 1995 thereby treating equals unequally violating their right to equality enshrined in Articles 14 and 16 of the Constitution of India. Action of the respondents in not treating the petitioner eligible for reservation under the Rules of 2000 read with Section 32 of the Act of 1995 being arbitrary, capricious and discriminatory is liable to be declared illegal and unconstitutional and is accordingly so declared.

In the result, this writ petition is allowed . The respondents are directed to treat the petitioner as eligible for appointment on the post of School Lecturer(Hindi) and accordingly consider his case for appointment and if found suitable appoint him on the said post with reference to the advertisement No.2/2001-2002 issued by the R.P.S.C.

Such appointment when made shall take effect from the date of appointment given to the last candidate appointed on the post of School Lecturer(Hindi) pursuant to said advertisement. However, since the petitioner is already working on the post of Teacher Grade III, he shall be entitled to only notional benefits. His salary shall be notionally fixed with reference to the said date of appointment. He shall however be entitled to other consequential benefits including seniority etc.. Compliance of this judgment shall be made within a period of two months from the date of service of its copy on the respondents.

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.